

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/11/2021

VIA CM/ECF

William E. Vita

May 7, 2021

1325 Avenue of the Americas
28th Floor
New York, NY 10019
ext. 77002
t 212.989.8844
dd 212.779.6103
Email: wvita@shb.com

The Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street, Room 15D
New York, NY 10007

Re: *Jennifer Walsh v. Elanco Animal Health, Inc.* (Case No. 1:21-cv-02929-AT)

Dear Judge Torres,

This firm represents the Defendant, Elanco Animal Health Inc. (“Elanco”), in the above-referenced action. Elanco respectfully requests leave to file an unopposed Motion to Stay All Proceedings (“Unopposed Motion to Stay”) pending the determination of an MDL petition that has been filed before the Judicial Panel on Multidistrict Litigation (the “JPML”). *See* Ex. A, MDL Petition, *IN RE: Seresto Flea and Tick Collar Marketing, Sales Practices and Product Liability Litigation*, MDL-No.-3009 (J.P.M.L. Apr. 27, 2021). The MDL petition seeks to transfer this action and eleven others to the District of New Jersey pursuant to 28 U.S.C. § 1407. The bases of Elanco’s anticipated Unopposed Motion to Stay are provided below.

Separately, Elanco respectfully requests that the Court adjourn the pretrial conference currently scheduled for June 2, 2021. (Dkt. No. 7.)

I. BACKGROUND

A. This Action

On April 6, 2021, Plaintiff filed a Class Action Complaint against Elanco, alleging various claims in connection with Elanco’s sale of a collar that protects dogs and cats from fleas and ticks. (Dkt. No. 1.) As of the date of this letter, Elanco has not been served with process in this action.

On April 15, the Court entered an order setting an initial pretrial conference for June 2. (Dkt. No. 7.) Pursuant to this order and the Federal Rules of Civil Procedure, the parties must hold a Rule 26(f) conference by May 12, and must submit a joint letter and proposed Case Management Plan and Scheduling Order by May 26. *See* FED. R. CIV. P. 26(f)(1); Dkt. No. 7.

B. The MDL Petition

On April 27, Laura Revolinsky, the plaintiff in *Revolinsky v. Elanco Animal Health Inc., et al.*, No. 2:21-cv-10003-SDW-MAH (D.N.J.), filed an MDL petition seeking to centralize twelve actions, including this one, in the District of New Jersey pursuant to 28 U.S.C. § 1407. *See* Ex. A, MDL Petition at 5.

Elanco's response to the MDL petition is due June 3 and plaintiff's reply is due June 10. Elanco expects that the MDL petition will be resolved thereafter.

II. AN UNOPPOSED STAY OF ALL PROCEEDINGS IS WARRANTED PENDING THE JPML'S DECISION REGARDING TRANSFER

Elanco's Unopposed Motion to Stay will seek to stay all proceedings in this action pending resolution of the MDL petition currently before the JPML. "It is common for courts to stay an action pending a transfer decision by the JPML." *Ritchie Cap. Mgmt., LLC v. Gen. Elec. Cap. Corp.*, 87 F. Supp. 3d 463, 471 (S.D.N.Y. 2015). A federal court has authority to stay proceedings pursuant to its inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Courts in the Second Circuit "consider five factors in deciding whether a stay is appropriate: (1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest." *Ritchie*, 87 F. Supp. 3d at 471 (internal quotation marks and citation omitted).

Here, there is no risk of prejudice to Plaintiff, as Plaintiff has consented to a stay of all proceedings in this action pending resolution of the MDL petition. Further, if the case is not stayed, both parties will incur potentially unnecessary litigation expenses in the event the JPML decides to consolidate and transfer this action. *See Rojas v. Teva Pharms. USA, Inc.*, No. 20-CV-6448 (KMK), 2020 WL 8513143, at *1 (S.D.N.Y. Dec. 1, 2020) ("A stay will allow Plaintiff and Defendants to avoid the risk of duplicating their briefing . . . [and] will also reduce the risk of inconsistent rulings."). Finally, "a stay serves the judicial and public interest in letting the JPML decide if the interests in efficiency and economy favor consolidation and transfer." *Ritchie*, 87 F. Supp. 3d at 471. "[A] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved." *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997); *see also Royal Park Invs. SA/NV v. Bank of Am. Corp.*, 941 F. Supp. 2d 367, 370 (S.D.N.Y. 2013) (collecting cases).

III. REQUEST FOR ADJOURNMENT

In light of Elanco's anticipated motion to stay, and pursuant to Rule I.C of this Court's *Individual Rules of Practice in Civil Cases*, Elanco requests that the Court adjourn the upcoming pretrial conference scheduled for June 2. This is Elanco's first request for an adjournment. As previously noted, Plaintiff has consented to a stay of all proceedings, including an adjournment of the pretrial conference currently scheduled for June 2.

* * *

In light of the foregoing, Elanco respectfully requests permission to file an unopposed Motion to Stay pending resolution of the MDL petition currently pending before the JPML. Elanco also respectfully requests that the Court adjourn the June 2 pretrial conference. We thank the Court in advance for its consideration of this request.

Respectfully submitted,

William E. Vita

William E. Vita
SHOOK, HARDY & BACON, L.L.P.
1325 Avenue of the Americas
28th Floor
New York, NY 10019
(212) 989-8844
(929) 501-5455 (fax)
Email: wvita@shb.com
Attorney for Defendant
Animal Health Inc.

GRANTED. The initial pretrial conference scheduled for June 2, 2021, is ADJOURNED *sine die*.

SO ORDERED.

Dated: May 11, 2021
New York, New York



ANALISA TORRES
United States District Judge